

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE JOE BRIMITE,

Movant,

File No. 1:05-CV-558

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

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ORDER GRANTING MOTION TO VOLUNTARILY DISMISS

This is an action filed pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence imposed by this Court upon Movant Willie Joe Brimite on June 23, 2003. On January 17, 2006, Movant filed a motion to voluntarily dismiss his § 2255 action without prejudice, or, in the alternative, to permit him to amend his § 2255 application to add an entirely new claim of ineffective assistance of counsel (Docket #12). On January 27, 2006, this Court denied the motion to amend but held in abeyance the motion to dismiss (Docket #13). The Court advised Movant that dismissal of his § 2255 motion likely would result in Movant foregoing all opportunity to have a § 2255 motion reviewed on the merits by this Court. Since Movant's statute of limitations already has expired, the Court advised Movant that any subsequently filed § 2255 motion likely would be time-barred. The Court therefore issued an order holding the motion to dismiss in abeyance, and Movant was given 30 days from the date of the order to withdraw his motion to voluntarily dismiss. Movant was

advised that, should he fail to withdraw the motion, the motion to dismiss would be granted and Movant's § 2255 application would be dismissed.

The 30-day period for withdrawing the motion now has passed, and Movant has failed to withdraw his motion to voluntarily dismiss. As a consequence, in accordance with the Court's order of January 27, 2006,

IT IS ORDERED that Movant Willie Joe Brimite's motion to voluntarily dismiss his § 2255 motion (Docket #12) is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that Movant's § 2255 motion to vacate, set aside, or correct sentence (Docket #1) is **DISMISSED WITHOUT PREJUDICE**.

Date: March 3, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE